

BILL ANALYSIS

C.S.H.B. 2900
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Practitioners of probate law, including members of the judiciary, occasionally encounter and identify situations that require legislative changes to more effectively and efficiently pursue the interests of the general public and their clients. C.S.H.B. 2900 seeks to address some such situations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2900 amends the Texas Probate Code to require a written application for transfer of guardianship to another county filed by a guardian or any other person in the court in which the guardianship is pending to state the reason for the transfer, rather than the reason for moving the transaction of business, and replaces references to the removal of a guardianship from one county to another with references to the transfer of a guardianship to another county in provisions of law establishing procedures for such a transfer. The bill requires a court, in an order authorizing the transfer of a guardianship to another county, to require the guardian, not later than the 20th day after the date the order is entered, to give a new bond payable to the judge of the court to which the guardianship is transferred or file a rider to an existing bond noting the court to which the guardianship is transferred. The bill changes the conditions under which a court is authorized on the transfer of guardianship to revoke the letters of guardianship and appoint a new guardian to include the condition that, because of the transfer, it is not in the best interests of the ward for the guardian of the estate to continue to serve in that capacity, rather than the condition that, because of the removal, it will be unduly expensive or unduly inconvenient to the estate. The bill requires a court to which guardianship is transferred to hold a hearing not later than the 90th day after the date the transfer takes effect to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

C.S.H.B. 2900 authorizes a judge to hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending and clarifies that the hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward. The bill prohibits such a hearing, on request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, from being held under that authority at a place other than the courthouse.

C.S.H.B. 2900 requires an application for receipt and acceptance of a foreign guardianship by a court in Texas to have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court. The bill removes a provision of law making the requirement for a court to hold a hearing to consider such an application contingent on the court's own motion or on the motion of the ward or any interested party and requires the court, at the same hearing, to

consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law. The bill authorizes a court that grants an application for receipt and acceptance of a foreign guardianship to modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law at the time of granting the application and repeals a provision of law requiring the court to hold a hearing to consider such modifications not later than the 90th day after the date the court grants the application.

C.S.H.B. 2900 authorizes a court that delays a guardianship proceeding filed in Texas and in a foreign jurisdiction, in making a determination whether venue of the proceeding is more suitable in that court or in the foreign court, to consider the preference of the ward or proposed ward if the ward or proposed ward is 12 years of age or older. The bill authorizes a court of this state, if at any time the court determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, to decline to exercise jurisdiction or to exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction. The bill authorizes such a court to continue to exercise jurisdiction after considering the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction; whether the court of this state is a more appropriate forum than the court of any other state, as determined by considering certain specified factors; and whether the court of any other state would have jurisdiction under the factual circumstances of the matter. The bill authorizes a court of this state, if the court determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court's jurisdiction engaged in unjustifiable conduct, to assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The bill prohibits the court from assessing fees, costs, or expenses of any kind against the state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 2900 repeals Section 893, Texas Probate Code.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2900 differs from the original by including the preference of a ward who is 12 years of age or older among the factors a court is authorized to consider in making a venue determination in certain guardianship proceedings, whereas the original authorizes only the preference of a proposed ward to be considered. The substitute differs from the original by omitting a provision contained in the original specifying that the consideration of the proposed ward's preference in making a venue determination applies to any expressed preference.

C.S.H.B. 2900 differs from the original by authorizing the court to perform certain actions on a determination that the court acquired jurisdiction to appoint a guardian on grounds of unjustifiable conduct to exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property, whereas the original authorizes the court to perform those actions for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of an incapacitated person's property. The substitute differs from the original

by referencing a ward or proposed ward in related provisions, whereas the original references an incapacitated person.

C.S.H.B. 2900 differs from the original in nonsubstantive ways.